

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

OREGON NATURAL DESERT  
ASSOCIATION,

Civ. No. 06-242-AA

Plaintiff,

ORDER

v.

DANA R. SHUFORD, et al.,

Defendants.

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Aiken, Judge:

In this action, plaintiff challenges the Bureau of Land Management (BLM) Records of Decision adopting the Andrews-Steens Resource Management Plan. On September 26, 2006, plaintiff moved to compel the production of documents improperly withheld from the Administrative Record for the challenged Records of Decision. The court granted the motion to the extent that defendants were required to submit the withheld documents to the court for *in camera* review to

determine whether the documents should be included in the Administrative Record (AR). With the exception of the planning documents referred to in the Records of Decision adopting the Andrews-Steens Resource Management Plan, I find that they do not.

Plaintiff identified four categories of documents that were improperly withheld from the AR: 1) BLM Handbooks; 2) existing management plans; 3) technical and scientific reports; and 4) documents withheld on grounds of privilege and deliberate process. In response to plaintiff's motion, defendants have agreed to include the requested BLM handbooks in the AR. Therefore, this request is moot.

Defendants oppose inclusion of the relevant planning documents as unnecessary, because they are adequately summarized within the AR. However, an AR requires inclusion of all documents before the agency when the challenged decision was made. Therefore, defendants shall add these planning documents, and any other planning materials deemed necessary, to the AR, with the exception of the Andrews Rangeland Summary Update.


Next, defendants oppose inclusion of the scientific materials cited by plaintiff on grounds that such materials were not provided to the BLM, and therefore they were not before the agency at the time the decision was made. I agree and do not require their inclusion in the AR. Plaintiff may nonetheless cite to these materials in support of its claims.

Finally, defendants concede that they erroneously withheld some documents under the attorney-client and/or deliberative process privileges and will add those documents to the AR. However, defendants maintain that other documents remain subject to the privileges, and those were identified and provided to the court. Upon review of the documents or portions thereof withheld on these grounds, I agree with defendants that the attorney-client and deliberative process privileges

shield from disclosure the documents identified on pages 8-12 of the government's statement in response. Accordingly, I will not order their inclusion to the AR, except to the extent that the redacted documents shall be included.

IT IS SO ORDERED.

Dated this 27 day of November, 2006.

  
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Ann Aiken  
United States District Judge